

## § 11.19

VI, dated April 1996, including Revision I dated October 1997, and Revision II dated December 1999, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., A.T. Kearney, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/CME technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96-501788; ph: (703) 487-4650. Sections 11.34 (a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix II refer to this document.

(5) The CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation, Volumes I-IV, dated April 1996, including Revision I dated October 1997, and Revision II dated December 1999, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/GLE technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96-501770; ph: (703) 487-4650. Sections 11.34 (a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix III refer to this document.

(b) The publications or portions of publications listed in paragraph (a) of this section are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 9772, Mar. 25, 1988; 61 FR 20609, May 7, 1996; 62 FR 60459, Nov. 10, 1997; 65 FR 6014, Feb. 8, 2000; 69 FR 18803, Apr. 9, 2004]

## 43 CFR Subtitle A (10-1-08 Edition)

### § 11.19 [Reserved]

### Subpart B—Preassessment Phase

#### § 11.20 Notification and detection.

(a) *Notification.* (1) Section 104(b)(2) of CERCLA requires prompt notification of Federal and State natural resource trustees of potential damages to natural resources under investigation and requires coordination of the assessments, investigations, and planning under section 104 of CERCLA with such trustees.

(2) The NCP provides for the OSC or lead agency to notify the natural resource trustee when natural resources have been or are likely to be injured by a discharge of oil or a release of a hazardous substance being investigated under the NCP.

(3) Natural resource trustees, upon such notification described in paragraphs (a) (1) and (2) of this section, shall take such actions, as may be consistent with the NCP.

(b) *Previously unreported discharges or releases.* If a natural resource trustee identifies or is informed of apparent injuries to natural resources that appear to be a result of a previously unidentified or unreported discharge of oil or release of a hazardous substance, he should first make reasonable efforts to determine whether a discharge or release has taken place. In the case of a discharge or release not yet reported or being investigated under the NCP, the natural resource trustee shall report that discharge or release to the appropriate authority as designated in the NCP.

(c) *Identification of co-trustees.* The natural resource trustee should assist the OSC or lead agency, as needed, in identifying other natural resource trustees whose resources may be affected as a result of shared responsibility for the resources and who should be notified.

[53 FR 5172, Feb. 22, 1988]

#### § 11.21 Emergency restorations.

(a) *Reporting requirements and definition.* (1) In the event of a natural resource emergency, the natural resource trustee shall contact the National Response Center (800/424-8802) to report

the actual or threatened discharge or release and to request that an immediate response action be taken.

(2) An emergency is any situation related to a discharge or release requiring immediate action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources, or a situation in which there is a similar need for emergency action.

(b) *Emergency actions.* If no immediate response actions are taken at the site of the discharge or release by the EPA or the U.S. Coast Guard within the time that the natural resource trustee determines is reasonably necessary, or if such actions are insufficient, the natural resource trustee should exercise any existing authority he may have to take on-site response actions. The natural resource trustee shall determine whether the potentially responsible party, if his identity is known, is taking or will take any response action. If no on-site response actions are taken, the natural resource trustee may undertake limited off-site restoration action consistent with its existing authority to the extent necessary to prevent or reduce the immediate migration of the oil or hazardous substance onto or into the resource for which the Federal or State agency or Indian tribe may assert trusteeship.

(c) *Limitations on emergency actions.* The natural resource trustee may undertake only those actions necessary to abate the emergency situation, consistent with its existing authority. The normal procedures provided in this part must be followed before any additional restoration actions other than those necessary to abate the emergency situation are undertaken. The burden of proving that emergency restoration was required and that restoration costs were reasonable and necessary based on information available at the time rests with the natural resource trustee.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5173, Feb. 22, 1988]

#### § 11.22 Sampling of potentially injured natural resources.

(a) *General limitations.* Until the authorized official has made the determination required in § 11.23 of this part

to proceed with an assessment, field sampling of natural resources should be limited to the conditions identified in this section. All sampling and field work shall be subject to the provisions of § 11.17 of this part concerning safety and applicability of resource protection statutes.

(b) *Early sampling and data collection.* Field samples may be collected or site visits may be made before completing the preassessment screen to preserve data and materials that are likely to be lost if not collected at that time and that will be necessary to the natural resource damage assessment. Field sampling and data collection at this stage should be coordinated with the lead agency under the NCP to minimize duplication of sampling and data collection efforts. Such field sampling and data collection should be limited to:

(1) Samples necessary to preserve perishable materials considered likely to have been affected by, and contain evidence of, the oil or hazardous substance. These samples generally will be biological materials that are either dead or visibly injured and that evidence suggests have been injured by oil or a hazardous substance;

(2) Samples of other ephemeral conditions or material, such as surface water or soil containing or likely to contain oil or a hazardous substance, where those samples may be necessary for identification and for measurement of concentrations, and where necessary samples may be lost because of factors such as dilution, movement, decomposition, or leaching if not taken immediately; and

(3) Counts of dead or visibly injured organisms, which may not be possible to take if delayed because of factors such as decomposition, scavengers, or water movement. Such counts shall be subject to the provisions of § 11.71(l)(5)(iii) of this part.

#### § 11.23 Preassessment screen—general.

(a) *Requirement.* Before beginning any assessment efforts under this part, except as provided for under the emergency restoration provisions of § 11.21 of this part, the authorized official shall complete a preassessment screen